



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

July 25, 2023 Government Records Council Meeting

Anonymous
Complainant

Complaint No. 2021-233

v.

Belleville Board of Education (Essex)
Custodian of Record

At the July 25, 2023 public meeting, the Government Records Council (“Council”) considered the July 18, 2023 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Recognizing that the Complainant’s October 6, 2021 complaint filing is no longer proper pursuant to N.J.A.C. 5:105-2.3(j)-(l); their complaint was nonetheless lawful at that time because it was consistent with the regulations and prevailing case law prior to the GRC’s promulgation of its current regulations. Anonymous (In Care of John Paff) v. Twp. of Monroe, GRC Complaint No. 2006-160 (April 2008); Moore v. N.J. Dep’t of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). Thus, the Council declines to order the Complainant to provide their complete contact information.
2. The Complainant’s OPRA request item No. 2 seeking legal bills containing “other itemized charges” is invalid because it required research. The Custodian had no legal duty to research his files, or cause research, to locate records potentially responsive to the request item. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Twp. Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, the Custodian lawfully denied access to the request item. N.J.S.A. 47:1A-6.
3. The Custodian has borne his burden of proof that the proposed special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera, GRC 2009-311. Specifically, the evidence supports that the realized and estimated 30 hours is reasonable to retrieve, assemble, review, and redact the itemized legal bills in response to the Custodian’s OPRA request item No.1. Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt

of the proposed special service charge totaling \$1,741.80. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

4. **The Complainant shall comply with conclusion No. 3 above within ten (10) business days of receipt of this order by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase these records. The Complainant's failure to take any action within the allotted ten (10) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Should the Complainant submit payment, the Custodian shall disclose the responsive records within ten (10) business days after receipt thereof.**

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 25th Day of July 2023

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 27, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 25, 2023 Council Meeting**

**Anonymous¹
Complainant**

GRC Complaint No. 2021-233

v.

**Belleville Board of Education (Essex)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. Legal bills that contain itemized tenure charges for work that was done on the following cases:
 - a. PERC violation
 - b. Tenure violation against Mr. Mignone
 - c. Electioneering charges against Mr. Mignone
 - d. Tomko’s request to investigate the legitimacy of the Belleville Education Association (“BEA”) election
2. Legal bills that contain other itemized charges related to cases/counts/charges being brought against the BEA and/or Mr. Mignone.

Custodian of Record: Matthew Paladino

Request Received by Custodian: August 13, 2021

Response Made by Custodian: August 25, 2021; September 14, 2021

GRC Complaint Received: October 6, 2021

Background³

Request and Response:

On August 13, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 25, 2021, the Custodian responded to the Complainant stating that an extension until October 6, 2021 was needed to fulfill the request. The Custodian also stated that a special service charge may be imposed.

On September 14, 2021, the Custodian responded in writing to OPRA request item No. 1 stating the Belleville Board of Education (“Board”) had so far identified approximately 200 pages

¹ No legal representation listed on record.

² Represented by Amanda N. Castrogiovanni, Esq., of The Busch Law Group (Metuchen, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

of documents which may be responsive out of 1,400 pages located. The Custodian stated that the request required an extension time to convert the files, and review for relevance and potential redactions. The Custodian stated it was anticipated to take a total of thirty (30) hours to complete the request, with the total estimated charge to take \$1,741.80, broken down as \$25.26/hour for 15 hours to retrieve and convert, and \$90.86/hour for 15 hours to review and redact. The Custodian maintained that the Board still needed the extension until October 6, 2021 to process the records once payment was received.

Regarding item No. 2, the Custodian stated that it was denied as overly broad. The Custodian stated that the request did not identify specific records but instead sought any and all “itemized charges” relevant to a number of topics, citing Gannett New Jersey Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 211-12 (App. Div. 2005), New Jersey Builders Ass’n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 178 (App. Div.), certif. denied, 190 N.J. 394 (2007), Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 40 (App. Div. 2005).

On September 15, 2021, the Complainant replied to the Custodian objecting to the special service charge.

Denial of Access Complaint:

On October 6, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he wished to retain his anonymity throughout the process. The Complainant then argued that the estimated charge of nearly \$1,750 was excessive and a strategy to deny his request. The Complainant asserted that he was willing to amend the portion of the request deemed “overly broad” but was not willing to pay such a high special service charge.

Statement of Information:

On October 21, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 13, 2021. The Custodian certified that on August 16, 2021, a Board staff member began the process of retrieving, compiling, sorting and converting copies of documents that were potentially responsive to the request. The Custodian certified that this process continued over the course of ten (10) business days, reviewing over 1,400 pages of legal bills over 15 hours. The Custodian certified that he extended the time to respond to the OPRA request on August 26, 2021. The Custodian certified that he thereafter responded to the Complainant on September 14, 2021, stating that item No. 1 required an imposition of a special service charge, and item No. 2 was overly broad.

The Custodian initially argued that a considerable amount of time was expended to retrieve the records and prepare them for conversion, and the Board had a right under OPRA to assess a special service charge. The Custodian asserted that 1,400 pages were initially located, and five (5) hours were spent to identify 200 pages of documents that were potentially responsive. The Custodian asserted that the records required review for redactions, in particular to protect personal information under N.J.S.A. 47:1A-1.1, confidential student information pursuant to N.J.S.A. 47:1A-1, -5, and N.J.A.C. 6A:32-7.5 (including the Family Educational Rights and Privacy Act

(“FERPA”) (20 U.S.C. 1232g; 34 CFR Part 99), confidential personnel information under N.J.S.A. 10:4-1(b)(8) and N.J.S.A. 47:1A-10, confidential attorney-client information under N.J.S.A. 47:1A-6, and advisory, consultative, and deliberative (“ACD”) material under N.J.S.A. 47:1A-1.1. The Custodian further argued that the Business Administrator was the lowest paid employee capable of performing the work because same would be able to identify confidential information.

The Custodian next argued that there was no obligation or requirement under OPRA to provide a detailed breakdown of how the charge was calculated. Aviles v. Perth Amboy Board of Education (Middlesex), GRC Complaint No. 2008-191 (November 2009). The Custodian stated that OPRA only requires that the requestor could review and object to the charge prior to the request being processed. The Custodian asserted that while time was already expended retrieving, sorting, converting, returning the files, and identifying potentially responsive records, it was needed for the Custodian to properly respond to the request. The Custodian also asserted that he provided a breakdown of the charge as a courtesy to the Complainant.

The Custodian next maintained that item No. 2 was overly broad as it failed to name specifically identifiable records. The Custodian argued that the item also failed to identify a specific date or date range and would require the Custodian to conduct research that was outside of his obligations. The Custodian argued that the item seeks all “itemized charges” that were potentially relevant to a number of unclear topics. The Custodian argued that OPRA specifically prohibits requests for “any and all records” or requests that constitute “wholesale requests for general information to be analyzed, collated and compiled by the responding government entity.” MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005).

Lastly, the Custodian contended that the Complainant should not remain anonymous. The Custodian asserted that while OPRA expressly allows anonymous requests under N.J.S.A. 47:1A-5, there is no provision which permits a complainant to remain anonymous. The Custodian argued that if the Legislature intended on complainants to remain anonymous, then it would have been explicitly stated in the statute.

Next, the Custodian asserted that there was no compelling reason to permit an anonymous filing, parallel to the court’s decision in A.A. v. Gramiccioni, 442 N.J. Super. 276 (Super. Ct. App. Div. 2015). The Custodian contended that the Court rules on anonymity were to protect the identity of victims, not merely a party who refused to identify themselves without basis. Id. at 281. The Custodian contended that there are certain instances in which litigants have been expressly permitted to proceed anonymously, but OPRA complainants have not been granted that right.

The Custodian further argued that the anonymous nature of a party makes it impossible for the Board’s representation from determining whether there exists a conflict of interest. The Custodian also contended that it would be difficult for an anonymous complainant to verify their complaint. Further, it would make it impossible to serve any notices or documents on the unknown party.

The Custodian therefore argued that it would be improper for the GRC to adjudicate complaints anonymously due to the lack of risk to physical harm against the Complainant, and the prejudice against the Board regarding disclosure and open proceedings.

Additional Submissions:

On October 14, 2021, the Complainant e-mailed the GRC in response to the Custodian's SOI. The Complainant first asserted that the SOI made it appear that the work to process the OPRA request had already been done, so demanding payment at this junction is an attempt to punish the requestor or reveal his identity.

The Complainant next argued that the Board's abilities placed it in the strong position to retaliate against an OPRA requestor, especially if the requestor was an employee, the parent of a student, or a member of the community. The Complainant contended that the Board was purposefully withholding information with the intent of ascertaining his real identity.

On May 11, 2023, the GRC requested a 14-point special service charge analysis from the Custodian. On May 18, 2023, the Custodian provided the following responses to the 14-point analysis:

1. What records are requested?

Response: Complainant submitted a request for: "electronic copies of ALL legal bills that contain itemized charges for work that was done on any of the aforementioned cases (i.e., the PERC violation, the tenure charges against Mr. Migone, the electioneering charges against Mr. Mignone, and Tomko's request to investigate the legitimacy of the BEA election)."

2. Give a general nature description and number of the government records requested.

Response: The requested records seek legal bills which itemize charges done on several specifically identified cases named in the Complainant's request. The relevant legal bills span a period of 6 years. The documents had to be retrieved from boxes, compiled, sorted and converted into an electronic format so that the documents can be reviewed, redacted and produced. The documents subsequently had to be returned to their appropriate boxes for storage. The documents potentially responsive to the request total 1,364 pages in length. A cursory review of those documents was required by an administrator with the knowledge and judgement to identify the cases specifically responsive to the request.

3. What is the period of time over which the records extend?

Response: Approximately 6 years, from 2014 through 2019.

4. Are some or all of the records sought archived or in storage?

Response: Yes, most, if not all, of the records were stored in paper format. Accordingly, this required a staff member to identify, retrieve from boxes, compile, sort convert into electronic format (to allow for review, redaction and production of the records) and return the records to their appropriate boxes for storage.

5. What is the size of the agency (total number of employees)?

Response: The [Board] employs approximately 949 individuals, including clerical staff, professional staff, teachers, faculty, administrators, groundskeepers, and custodial staff.

6. What is the number of employees available to accommodate the records request?

Response: Two employees are available to accommodate the request. One (1) clerical staff employee who is employed to assist the Business Administrator/Custodian of Records and was thus responsible for the task of locating, retrieving, compiling, sorting, converting and returning of the records. The [Custodian] is responsible for identifying those records which are responsive to the request and reviewing/redacting same to protect confidential information from disclosure.

7. To what extent do the requested records have to be redacted?

Response: The records required review of line items for redactions required to protect any confidential and/or exempt information from disclosure. The legal invoices contain a number of line items which potentially require redactions to protect personal information under N.J.S.A. 47:1A-1.1, confidential student information pursuant to N.J.S.A. 47:1A-1, -5, and N.J.A.C. 6A:32-7.5 (including FERPA) (20 U.S.C. 1232g; 34 CFR Part 99), confidential personnel information under N.J.S.A. 10:4-1(b)(8) and N.J.S.A. 47:1A-10, confidential attorney-client information under N.J.S.A. 47:1A-6, and ACD material under N.J.S.A. 47:1A-1.1.

8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?

Response: A Board staff member, the lowest level employee capable of fulfilling this portion of the request, located, retrieved, sorted, compiled, and converted the paper records to electronic format and returned the records to their original storage location. This process continued over the course of ten (10) business days, in between performing her regular job duties and requirements. Approximately 1,400 pages of records were processed by the staff member which took approximately 15 hours to complete. The aforementioned time and effort were undertaken by the Board in order to meet the statutory requirements for responding to the request, notwithstanding the significant amount of time, effort and interruption of other job duties that this entailed. This portion of fulfilling the request was already completed and thus represents an actual direct cost, as identified in the correspondence to the Complainant dated September 14, 2021, advising of the special service charge. More specifically, based on the level of personnel, hourly rate, and number of hours required for the employee to locate, retrieve, sort, compile, convert and return the records, the special service charge in order to fulfill this portion of the request is \$25.26 per hour for 15 hours, or \$378.90.

9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?

Response: As the Business Administrator is the Custodian of Records and as such is the person potentially held responsible for granting or denying access, it is reasonable for the [Custodian] to be the individual responsible for identifying the responsive records and for reviewing and redacting same. The records contain information which require the knowledge and judgment of an individual a professional level, information that a clerical staff member would likely not recognize as confidential. Accordingly, the [Custodian] is the lowest level employee capable of fulfilling this portion of the request.

10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?

Response: This was done by a Board staff member, as explained in item #8 above, and included in the calculation of 15 hours' total time which was incurred to locate, retrieve, convert and return the records to their original storage location.

11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?

Response: Based on the availability of employees to accommodate the request and the knowledge and judgment required for same, two (2) employees were engaged to process the response, each the lowest level employee capable of fulfilling the separate portions of responding to the request. Specifically, as already explained above, a Board staff member, the lowest level employee capable of locating, retrieving, compiling, sorting, converting, and returning of the records, fulfilled this portion of the request. Subsequently, due to the knowledge and judgement required, the [Custodian] is the lowest level employee capable of identifying the responsive records and reviewing/redacting same to protect confidential/exempt information from disclosure.

12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?

Response:

- (1) Joann Conway, Confidential Administrative Assistant to the [Custodian] at \$25.26 per hour. Although Ms. Conway is no longer employed by the Board, this cost represents an actual direct cost.
- (2) Matthew Paladino, [Custodian] at \$98.02. On September 14, 2021, at the time the Complainant was advised of the special service charge, Mr. Paladino's rate was identified as \$90.86 per hour. However, the rate is now currently \$98.02. As such, the special service charge identified in the correspondence will have to be recalculated accordingly.

13. What is the availability of information technology and copying capabilities?

Response: The Board has computers, printers, and electronic software available for processing electronic records. However, in this case, the records were located in paper format in boxes, which required the records to be located, retrieved, compiled, sorted, converted page-by-page to electronic format, and returned to their original location.

14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.

Response: For the employee to locate, retrieve, sort, compile, convert, and return the records to the original location, the actual direct cost in order to fulfill this portion of the request is \$25.26 per hour for 15 hours, or \$378.90.

To review and redact the line items on the invoices to protect information that is confidential and/or exempt for a number of potential reasons, 15 hours of time is estimated. Since the date the Complainant was advised of the special service charge, the [Custodian's] hourly rate has increased to \$98.02. Accordingly, the special service charge to process this portion of the request is estimated to be \$1,470.30.

Accordingly, the estimated special service charge is a total of \$1,849.20.

Please note that the 5 hours of time spent to cull the approximately 1,400 pages down to the approximately 200 pages of records specifically responsive to the request was not included in the estimated special service charge. The actual direct cost to fulfill this portion of the request is \$90.86 per hour (the hourly rate for the [Custodian] at that time) for 5 hours, or \$454.30. If this is included with the estimated special service charge identified above, the total increases to \$2,303.50.

Analysis

Anonymous Complaint

The GRC initially addresses the Custodian's objection to the Complainant's anonymous status. At the time the Complainant filed the instant matter, the GRC accepted anonymous complaint filings without a showing of good cause. In Anonymous (In Care of John Paff) v. Twp. of Monroe, GRC Complaint No. 2006-160 (April 2008), the Council found that under N.J.S.A. 47:1A-5(i), OPRA permits requestors to submit OPRA requests anonymously. The Council also noted that the only limitation on anonymous requestors was under N.J.S.A. 47:1A-2.2. The Council therefore held that because OPRA provides that a requestor may submit OPRA requests anonymously, they were also permitted to file complaints anonymously. The GRC thereafter adjudicated several complaints filed by anonymous complainants. See e.g., Anonymous v. Franklin Twp. Fire Dist. No. 1, GRC Complaint No. 2008-257 (December 2009); Anonymous v. NJSP, GRC Complaint No. 2014-78 (February 2014); Anonymous v. Borough of Haledon (Passaic), GRC Complaint No. 2020-125 (February 2015). Further, in A.A. the court left open the

possibility that requestors could file complaints with GRC anonymously, even if they did not have that right (absent showing good cause) with the courts. See 442 N.J. Super. at 283.

However, during the pendency of this complaint, GRC regulations were promulgated with amendments on November 7, 2022. Relevant to this matter are the provisions related to anonymous complaint filers pursuant to N.J.A.C. 5:105-2.3(j)-(l). The regulations require a complainant to provide good cause to remain anonymous in line with the court's standard in A.A.

Since this Denial of Access Complaint was filed before the GRC promulgated its current regulations, the GRC must rely on the existent state of its regulations and case law at the time of the filing. Here, the Complainant filed the instant complaint on October 6, 2021, providing no name and only an e-mail address as their contact information. In the SOI, the Custodian contended the Complainant should not remain anonymous due to the inability to resolve potential conflicts of interest and bias against the Board. However, since the matter was filed with the GRC before the current regulations came into effect, the Complainant was permitted to remain anonymous without showing good cause. See Anonymous, GRC 2006-160.

Therefore, recognizing that the Complainant's October 6, 2021 complaint filing is no longer proper pursuant to N.J.A.C. 5:105-2.3(j)-(l); their complaint was nonetheless lawful at that time because it was consistent with the regulations and prevailing case law prior to the GRC's promulgation of its current regulations. Anonymous, GRC 2006-160. Thus, the Council declines to order the Complainant to provide their complete contact information.

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination."* N.J.S.A. 47:1A-1.

[MAG, 375 N.J. Super. at 546 (emphasis added)].

The court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be

required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added)].

The court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records* not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency’s files.” Id. (emphasis added). Bent, 381 N.J. Super. at 37,⁴ N.J. Builders Ass’n, 390 N.J. Super. at 178-79; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) because it fails to identify specific records, thus requiring a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato, GRC 2005-182. The second is those requests seeking information or asking questions. See, e.g., Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See, e.g., Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

In Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor’s OPRA request. The complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant’s OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as “to go or look through carefully in order to find something missing or lost.” The word research, on the other hand, means “a close and careful study to find new facts or information.” (Footnotes omitted.)

[Id.]

Further, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

⁴ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE's meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant's requests . . .* because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes" from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

[Valdes, GRC 2011-147, *et seq.* (emphasis added) (citing N.J. Builders Ass'n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 37 ; MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov't Records Council, GRC Complaint No. 2013-278 (September 2014))].

Here, the Complainant's OPRA request item No. 2 sought "itemized charges related to cases/counts/charges being brought against the BEA and/or Mr. Mignone." The Custodian responded to the Complainant stating that the request was overly broad and would require research. In the SOI, the Custodian added that the request item failed to identify a date or range of dates and failed to identify specific records.

In reviewing the request item and the Custodian's arguments, the GRC is persuaded that same is invalid because it would have required research. The request item requires the Custodian to research its legal bills to determine whether they contain charges pertaining to the BEA or Mr. Mignone. Further, the lack of a date or range of dates expands the search to include virtually all legal bills maintained by the Borough. Much like the request at issue in Valdes, the request here inherently requires the type of research that is not contemplated under OPRA.

Accordingly, the Complainant's OPRA request item No. 2 seeking legal bills containing "other itemized charges" is invalid because it required research. The Custodian had no legal duty to research his files, or cause research, to locate records potentially responsive to the request item. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Donato, GRC 2005-182; Valdes, GRC 2011-147, *et seq.* Thus, the Custodian lawfully denied access to the request item. N.J.S.A. 47:1A-6.

Special Service Charge

Initially, the GRC notes that the Complainant's OPRA request No. 1 sought legal bills containing charges involving a number of subjects. This request would also have been invalid for the same reasons as request item No. 2, as it requires the Custodian to conduct research. See Valdes, GRC 2011-147, *et seq.*; N.J. Builders Ass'n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 37. However, in matters where a request was overly broad on its face, the custodian was able to locate records, the Council has followed Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) in determining that the request contained sufficient information for record identification. See Bond

v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (March 2011); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014). Here, the Custodian was clearly able to locate a number of responsive records. Based on this, the GRC declines to address the invalid OPRA request issue.

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (emphasis added).]

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case by case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post, 360 N.J. Super. at 199. There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

Initially, the GRC notes that the Custodian's total estimated charge at the time of the request was \$1,741.80, which reflected the Custodian's hourly rate at the time of \$90.86 for 15 hours. Thereafter, in response to the GRC's request for a 14-point analysis, the Custodian recalculated the original estimated charge using his current hourly rate of \$98.02, for a total of \$1,849.20. However, the GRC shall address the special service charge issue using the original estimate of \$1,741.80 since said charge formed the basis of the Complainant's Denial of Access Complaint.

In the current matter, the Custodian provided a 14-point analysis reflecting the analytical framework outlined in Courier Post, 360 N.J. Super. at 199, regarding the proper assessment of a special service charge. The Custodian certified that the proposed charge of \$1,741.80 comprises a total of thirty (30) hours to process 1,400 pages of potentially responsive records, spanning six (6) years. The Custodian certified that an employee with an hourly rate of \$25.26 expended fifteen (15) hours to locate, retrieve, sort, compile, convert, and return the records to the original location. The Custodian certified that he spent five (5) hours reducing the 1,400 pages to 200 responsive records but did not include that expended time in the estimate. The Custodian certified that he estimated it would take fifteen (15) hours to review and redact the records at an hourly rate of \$90.86. The Custodian also certified that the Board employed 949 individuals. The Complainant objected to the Custodian's imposition of a special service charge, asserting that the cost was excessive and put in place to avoid disclosure.

In Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012), the complainant sought in part motor vehicle recording ("MVR") footage from the Rutgers University Police Department ("RUPD"). The custodian certified that there was one (1) out of the seventy-five (75) employees qualified to fulfill the complainant's OPRA request. The employee certified that he spent approximately twelve (12) hours fulfilling the entire request, but RUPD charged only for the two (2) hours spent locating and copying the requested MVR footage on his work computer. The employee also certified that while creating a copy of the footage, he was unable to perform any other work on his computer. The Council held that the disruption to the employee's regular duties, as well as the fact that RUPD did not charge the entire time expended to fulfill the request, warranted the special service charge.

A review of the foregoing supports that the estimated and realized expenditure of 30 hours represents an extraordinary amount of time and effort to process the OPRA request given the nature of the request, the number of potentially responsive pages located, and the disruption of employee duties. Specifically, the request item sought itemized bills spanning six (6) years and required the Custodian to research and review same to determine whether they pertained to the several topics identified by the Complainant, and to identify and redact potentially sensitive information. The GRC also notes that like the custodian in Rivera, GRC 2009-311, the Custodian did not charge the entire time currently expended to process the request. Thus, the evidence of record adequately supports that a special service charge is warranted here.

Accordingly, the Custodian has borne his burden of proof that the proposed special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera, GRC 2009-311. Specifically, the evidence supports that the realized and estimated 30 hours is reasonable to retrieve, assemble, review, and redact the itemized legal bills in response to the Custodian's OPRA

request item No. 1. Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge totaling \$1,741.80. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Recognizing that the Complainant's October 6, 2021 complaint filing is no longer proper pursuant to N.J.A.C. 5:105-2.3(j)-(l); their complaint was nonetheless lawful at that time because it was consistent with the regulations and prevailing case law prior to the GRC's promulgation of its current regulations. Anonymous (In Care of John Paff) v. Twp. of Monroe, GRC Complaint No. 2006-160 (April 2008); Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). Thus, the Council declines to order the Complainant to provide their complete contact information.
2. The Complainant's OPRA request item No. 2 seeking legal bills containing "other itemized charges" is invalid because it required research. The Custodian had no legal duty to research his files, or cause research, to locate records potentially responsive to the request item. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Twp. Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, the Custodian lawfully denied access to the request item. N.J.S.A. 47:1A-6.
3. The Custodian has borne his burden of proof that the proposed special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera, GRC 2009-311. Specifically, the evidence supports that the realized and estimated 30 hours is reasonable to retrieve, assemble, review, and redact the itemized legal bills in response to the Custodian's OPRA request item No. 1. Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge totaling \$1,741.80. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
4. **The Complainant shall comply with conclusion No. 3 above within ten (10) business days of receipt of this order by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase these records. The Complainant's failure to take any action within the allotted ten (10) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Should the Complainant**

submit payment, the Custodian shall disclose the responsive records within ten (10) business days after receipt thereof.

Prepared By: Samuel A. Rosado
Staff Attorney

July 18, 2023